

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner  
Marshall Johnson  
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Thomas Pugh  
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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Petition by Minnesota Power for Approval of a Wind Purchase Power Agreement, Revised Rider for Fuel Adjustment, and Approval to Count the Wind Energy Towards Minnesota Power's Renewable Energy Objective.

ISSUE DATE: December 20, 2005

DOCKET NO. E-015/M-05-975

ORDER APPROVING WIND PURCHASE POWER AGREEMENT, INCLUDING THE REQUEST FOR VARIANCES, REVISED RIDER FOR FUEL ADJUSTMENT AND DEFERRAL TO THE RESOURCE PLAN

**PROCEDURAL HISTORY**

On June 22, 2005, Minnesota Power petitioned the Commission for approval of a Wind Energy Power Purchase Agreement (PPA) between Minnesota Power and FPL Energy Burleigh County LLC (FPLE). Under the proposed PPA, FPLE will construct, own and operate a 50 MW wind facility, and sell the output to Minnesota Power under the terms of the PPA. The petition also requested that Minnesota Power be authorized to revise the terms of its Rider for Fuel Adjustment (FCA Rider) to recover all costs incurred in connection with the PPA, and reasonable investments and expenditures as authorized by Minn. Stat. § 216B.1645. Finally, Minnesota Power requested confirmation that the purchase counts toward its good faith efforts toward meeting the Renewable Energy Objectives (REO) as contemplated by Minn. Stat. § 216B.1691.

On August 25, 2005, the Department of Commerce (Department) filed comments recommending approval of the PPA with modifications and reporting requirements. The Department raised five main issues:

- a) Whether the proposed project meets the REO requirements;
- b) Whether Minnesota Power's request to revise the terms of its Rider for Fuel Adjustment to recover all costs incurred in connection with the proposed PPA and future REO projects is consistent with the amended § 216B.1645;
- c) Whether the proposed price is reasonable;
- d) Whether Minnesota Power's ratepayers would be appropriately protected from the

financial risks of the project; and

- e) Whether Minnesota Power's ratepayers would be appropriately protected from the operational risks of the project.

On September 13, 2005, Minnesota Power filed reply comments, stating its general agreement with the Department's overall recommendations, but raising policy issues related to the treatment of renewable energy and the assessment of its good faith efforts towards the REO. Minnesota Power asserted that the renewable attributes of the proposed transaction should be treated as unbundled from the capacity and energy components of the purchase, and requested clarification regarding compensation for curtailment as a result of transmission capacity.

On October 21, 2005, the Department filed supplemental comments. The Department proposed that Minnesota Power supplement its comments in the pending resource plan docket to include the issue of the proper REO allocation of energy from a renewable energy facility.<sup>1</sup>

On December 1, 2005, the petition came before the Commission. There were no remaining disputed issues presented. Both parties concurred in Department or Commission staff recommendations on remaining issues.

## **FINDINGS AND CONCLUSIONS**

### **I. Summary of Commission Action**

The Commission approves the Power Purchase Agreement with conditions agreed to by Minnesota Power. The Commission amends the proposed Fuel Clause Adjustment rider language proposed by Minnesota Power, to tie the language to the statute, and to use language similar to that previously approved by the Commission for Xcel. Finally, the Commission defers to the pending resource plan the issue of the proper amount of renewable energy from the facility to count towards the Minnesota REO.

### **II. Statement of the Issues**

Minnesota Power is seeking approval of:

- a 50 MW wind PPA and authorization from the Commission to recover all costs incurred under the PPA, as well as other related costs, through the Company's FCA rider;

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<sup>1</sup> On October 25, 2005, Minnesota Power filed reply comments in the resource plan that supplement its position on this issue.

- changes to its FCA rider that will allow recovery of costs associated with renewable energy resources, such as the purchases made under the wind PPA; and
- a request that all of the energy purchases under the PPA count toward Minnesota Power's REO as set forth in Minn. Stat. § 216B.1691.

Initially, the parties disagreed on several issues. Following discussions and clarifications, the Department and Minnesota Power came to agreement on most issues.

### **III. Contract Approval**

With the modifications referenced herein, the Commission finds that this purchase power contract is reasonable, is in the public interest, and will be approved. Adding wind generation to the Minnesota Power system is clearly consistent with fundamental, longstanding state policies favoring expanded reliance on renewable generation.

### **IV. REO Requirements**

#### **• Out of State Facilities**

The Commission's June 1, 2004, Order in the REO docket (E999/C1-03-869) states:

In meeting their renewable energy objectives, utilities may include generation from out-of-state facilities, *as long as those facilities are used to serve Minnesota customers.*  
(Emphasis added).

In response to discovery from the Department, Minnesota Power stated that "[t]he proposed wind facility will be used to serve both Minnesota Power's retail and wholesale fuel clause adjustment customers." Minnesota Power did not document its assertion that the energy to be generated from this out-of-state facility would be used to serve Minnesota customers.

Therefore, to ensure that this requirement will be met, the Commission will require that the determination of REO eligibility for wind energy generated by the FPLE Project be contingent upon successful completion of the Midwest Independent System Operator (MISO) approval process for delivery of the generation to Minnesota.

#### **• Recovery of Costs Allowed Under Minn. Stat. § 216B.1645**

Minnesota Power seeks recovery of all costs incurred in connection with the PPA as authorized by the recently amended Minn. Stat. § 216B.1645, and proposes to recover these costs through the addition of the following language to its FCA Rider:

. . . the net energy cost of purchases from a qualifying facility, as that term is defined in 18

C.F.R. Part 292 and Minn. Rule 7835.0100, Subp. 19, as amended, and the net cost of energy and capacity purchases from any facility utilizing wind for the generation of electric energy plus any associated costs incurred in connection therewith including costs of curtailment and transmission, whether or not those purchases occur on an economic dispatch basis.

In the 2005 Legislative session, Minn. Stat. 216B.1645 was amended to provide special rate recovery treatment of investments and expenditures by utilities to meet the REO. This allowed for full recovery through an automatic adjustment to customer rates, once the REO investments and costs were approved by the Commission.

Minnesota Power's revised tariff language, which would permit automatic FCA recovery of all costs incurred in connection with the PPA, goes beyond the provisions for recovery in the amended statute. Minnesota Power modeled its proposed revised tariff language on language approved by the Commission for Otter Tail Power in Docket No. E-017/M-03-970, which was decided *prior* to the 2005 amendment of Minn. Stat. 216B.

The Commission instead adopts language more akin to that previously approved by it in connection with Xcel Energy's request to amend its Fuel Clause Rider *after* Minn. Stat. Section 216B.1645 was first enacted, to allow for:

. . . expenses incurred by the Company over the duration of any Commission approved contract, as provided for by section 216B.1645, to satisfy the renewable energy objectives set forth in section 216B.1691 . . .

- **Deferral of Renewable Energy Allocation Issues to Resource Plan**

Minnesota Power raised certain policy issues related to the treatment of renewable energy and the assessment of the Company's good faith efforts towards the REO. These issues may be relevant in the valuation of wind PPA's. However, these issues do not directly impact the determination of reasonableness of the proposed PPA herein. The Commission will address these issues elsewhere, such as Minnesota Power's current resource plan docket (E015/RP-04-865) pending before the Commission.

With respect to the issue of how much of the power counts toward Minnesota Power's compliance with the REO, the Commission has allowed for a process to determine how much energy will count toward a utility's good-faith effort toward the REO in its resource plan filing or its renewable energy objective filing in the Commission's October 19, 2004, order.<sup>2</sup> On October 25, 2005, Minnesota Power filed reply comments in the resource plan regarding this issue. The Commission therefore defers a decision regarding this issue to the pending resource plan proceeding.

## **V. Curtailment Issues**

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<sup>2</sup> *Opening Docket to Investigate Multi-State Program for Tracking and Trading Renewable Credits, and Requesting Periodic Updates from Stakeholder Group.*

The Commission finds that the PPA provides a reasonable balance of the risks and costs of curtailment between the FPLE and Minnesota Power's ratepayers. The events for which Minnesota Power needs to pay for curtailment, including the PTC, are provided in the PPA. The provisions are to ensure that the project will continue to receive payment for energy it would have generated (Compensated Curtailments) in the event the energy is curtailed by Minnesota Power as a result of:

- 1) Minnesota Power's refusal to accept Contract Energy at the Point of Delivery as a result of low load conditions that justify not accepting Contract Energy; or
- 2) The availability of less expensive energy from another source; or
- 3) Minnesota Power's election to use non-firm transmission service(s) to deliver Contract Energy.

The first and third of these provisions are consistent with the curtailment provisions in the most recently approved PPA for Xcel Energy (Docket No. E002/M-04-864). The second provision would allow Minnesota Power to compensate FPLE for curtailed energy due to the availability of less expensive energy from another source.

While the proposed structure appears to have merit, it would be helpful to have a means by which the Commission can monitor the use and conditions of compensated curtailment and can assess how Minnesota Power's use of firm and non-firm transmission works in practice.<sup>3</sup> To address these issues, the Commission will require Minnesota Power to provide, in each future FCA filing, the same type of information Xcel Energy was required to submit in Docket No. E002/M-04-864:

- The amount of any curtailment payments made under the three curtailment categories of the PPA;
- For any payments made under the third category, the reasons why Minnesota Power did not "obtain or maintain Firm Delivery Arrangements for such curtailed Contract Energy," and
- Why Minnesota Power believes it is prudent for ratepayers to pay for curtailment costs under any category.

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<sup>3</sup> Minnesota Power has agreed that use of compensated curtailment will be limited and occur under the specific events and conditions in the PPA. Minnesota Power has agreed to include specific information regarding its Compensated Curtailments in its FCA filings.

As in other dockets involving potential curtailment payments, the Commission will require Minnesota Power to credit against curtailment payments recovered from ratepayers any compensation received from transmission authorities for interrupting generation from the Project.

### **ORDER**

1. The Commission hereby approves Minnesota Power's request, including the request for variances, with conditions and reporting requirements set forth below.
2. The determination of REO eligibility for wind energy generated by the FPLE Project is contingent upon successful completion of the MISO approval process for delivery of the generation to Minnesota and deferral to a future proceeding, such as a resource plan.
3. Minnesota Power shall add the following language to its FCA rider instead of the language initially proposed by Minnesota Power:

. . . expenses incurred by the Company over the duration of any Commission-approved contract, as provided for by section 216B.1691. . . .
4. Minnesota Power's recovery of the costs associated with the FPLE PPA shall be limited to the amount of renewable generation that is used to serve Minnesota Power's retail customers.
5. Minnesota Power shall credit to ratepayers, through the FCA, for any compensation it receives from MISO, or any other transmission authority, for calling an interruption of the energy generated by the FPLE Project during the period that Minnesota Power is recovering curtailment provision costs from ratepayers.
6. Minnesota Power shall explicitly show in each FCA filing:
  - the amount of any curtailment payments made under the three curtailment categories of this PPA, and
  - why Minnesota Power believes it is prudent for ratepayers to pay for curtailment costs under any category, including the provision of an updated cost-benefit analysis when applicable.
7. Minnesota Power shall provide in a compliance filing a cost/benefit analysis prior to exercising the buy-out provision (Section 1.2 of the PPA).

8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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